

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

BAYER HEALTHCARE AG, ALCON, INC.,)
and ALCON MANUFACURING, LTD.,)
)
Plaintiffs,)
)
) Civil Action No. 06-234 (SLR)
v.)
)
TEVA PHARMACEUTICALS USA, INC.,)
)
Defendant.)
)

JOINT CLAIM CONSTRUCTION STATEMENT

Pursuant to paragraph 6 of the Scheduling Order in this case, dated July 12, 2006, Plaintiffs and Defendant submit the following list of disputed claim terms or phrases appearing in the asserted claims of U.S. Patent Nos. 4,990,517 (“the ‘517 patent”), 5,607,942 (“the ‘942 patent”), and 6,716,830 (“the ‘830 patent”).

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Terms or Phrases	Plaintiffs' Proposed Construction	Defendant's Proposed Construction
The compounds defined by the preambles and the formulas presented in claims 1 and 2 (claims 8, 9 and 11 directly or indirectly referring to claim 1).	'517 patent (claims 1, 2, 8, 9, and 11)	<p>Any compound of the structural formulas defined by the preambles and the structural formulas presented in claims 1 and 2.</p> <p>For clarity, plaintiffs contend that the claims encompass any compound possessing the connectivity of atoms set forth in the claims, including all stereoisomers, individually or any combination thereof, and not limited to racemates.</p>
"[said compound] substantially free [of other enantiomers and stereoisomers]" (found in claim 1; claims 3 and 5 referring to claim 1).	'942 patent (claims 1, 3, and 5)	<p>The phrase "substantially free" should be construed as "largely but not necessarily free."</p> <p>The phrase, to the extent it can be understood, means that any impurities consisting of "other enantiomers" or "other stereoisomers" must be below the detection limit for such enantiomers or stereoisomers.</p>

<p>“The compound (1-cyclopropyl-7-(2,8-diazabicyclo[4.3.0]non-8-yl)-6-fluoro-8-methoxy-1,4-dihydro-4-oxo-3-quinolonecarboxylic acid) of the formula</p> <p style="text-align: center;"></p> <p>“</p> <p>“ (found in claim 2; claims 4 and 7 referring to claim 2).</p>	<p>‘942 patent (claims 2, 4, and 7)</p>	<p>Any compound of the structural formula</p> <p style="text-align: center;"></p> <p>For clarity, plaintiffs contend that the claims encompass any compound possessing the connectivity of atoms set forth in the claim, including all stereoisomers, individually or any combination thereof, and not limited to racemates.</p>
<p>“moxifloxacin”</p>	<p>‘830 patent (claim 1)</p>	<p>The compound</p> <p style="text-align: center;"></p> <p>The structure set forth at Col. 3, II. 38-48 of the ‘830 patent namely:</p> <p style="text-align: center;"></p>